12-6326-17493-CV

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Eva Young and Laura Lehmann, M.D.,

Complainants,
vs.

PROBABLE CAUSE
ORDER

Mark Stenglein, Hennepin County Commissioner, and Mark Stenglein Volunteer Committee

Respondents.

This matter came on for a probable cause hearing under Minnesota Statutes § 211B.34, before Administrative Law Judge Steve M. Mihalchick on September 11, 2006, to consider a complaint filed by Eva Young and Laura Lehmann, M.D., on September 6, 2006. The probable cause hearing was conducted by telephone conference call. The record closed on September 15, 2006, with the submission of written arguments.

Eva Young, 1308 Boardwalk Avenue, Minneapolis, MN 55411**,** and Laura J. Lehmann, M.D., 6828 Wooddale Avenue South, Edina, MN 55435-1635**,** appeared on their own behalves without counsel. Brian Rice, Attorney at Law, Rice, Michels & Walther, LLP, 206 East Bridge – Riverplace, 10 Second Street NE, Minneapolis, MN 55413, appeared on behalf of Hennepin County Commissioner Mark Stenglein and the Mark Stenglein Volunteer Committee (Respondents).

Based on the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that there is probable cause to believe that the Respondents violated the charitable contribution limit of Minnesota Statute § 211B.12(6).

ORDER

IT IS ORDERED:

1. That there is probable cause to believe that Respondents violated Minnesota Statute § 211B.12(6) as alleged in the Complaint.

2. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges pursuant to Minnesota Statute § 211B.35.

Dated: September 19, 2006

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Tape recorded. One tape.

MEMORANDUM

The Complaint alleges that Respondents violated Minn. Stat. § 211B.12(6) by contributing $100 to Eastside Neighborhood Services on September 9, 2005. Section 211B.12 governs legal expenditures by campaign committees and candidates of money collected for political purposes. Under this statute, a candidate or campaign committee may contribute not more than $50 to any charity annually. In support of their complaint, the Complainants submitted a copy of the Respondents' 2005 Annual Campaign Finance Report which lists the $100 disbursement as a "donation" to Eastside Neighborhood Services on a Schedule B expenditures form.

Respondents state that the $100 donation listed on their 2005 annual report represents the individual cost of attending the 10th Annual Mill City Charitable Golf Tournament benefit for Eastside Neighborhood Services. According to Respondents, this contribution did not violate Minn. Stat. § 211B.12(6) because only $25 of the $100 donation was an actual charitable contribution to Eastside Neighborhood Services. Respondents maintain that the remaining $75 went to the Majestic Oaks Golf Club to pay for green fees and meal costs associated with the fundraising event. In support of their argument, the Respondents have submitted an affidavit of Ruth Ann Weiss, an employee of Eastside Neighborhood Services, who organized the 2005 Mill City Charitable Golf Tournament. Ms. Weiss confirms that $75 of the $100 cost was used to pay for green fees, golf cart rental, and food and beverages at the Majestic Oaks Country Club, and the remaining $25 went to Eastside Neighborhood Services as a charitable contribution.[1]

The Respondents have also submitted an affidavit of Respondent Stenglein who states that he attends a number of charitable events in his capacity as a County Commissioner in order to better understand the operations and services provided by non-profit organizations in his district.[2] Based on an Advisory Opinion of the former Ethical Practices Board, the Respondents contend that the $75 portion of the $100 cost should be considered a non-campaign disbursement under Minn. Stat. § 10A.01, subd. 26. In that Opinion, the Ethical Practices Board stated that "[T]he cost for a legislator to attend functions such as those described is a cost of serving in public office which may be paid for with principal campaign committee funds."[3]

The Complainants point out that the Respondents reported the full $100 amount as a donation to the Eastside Neighborhood Services and only after the Complaint was filed did Respondents re-categorize the amount as a $25

[1] Affidavit of Weiss at ¶ 4.
[2] Affidavit of Stenglein at ¶ 3.
[3] Advisory Opinion No. 255, p. 2.

donation. Complainants maintain that the Complaint has established a pattern of poor record-keeping on the part of the Respondents and a general disregard for the campaign finance rules.[4]

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.[5] The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence.*[6] The purpose of a probable cause determination is to answer the question whether, given the facts disclosed by the record, it is fair and reasonable to require the respondent to go to hearing on the merits.[7] If the judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal, a motion to dismiss for lack of probable cause should be denied.[8] A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. When a defendant offers either testimonial or non-testimonial evidence to controvert the facts appearing in the record, the motion to dismiss must be denied unless the evidence introduced by the defendant makes "inherently incredible" the facts which appear in the record and which are necessary to establish an essential element of the offense charged.[9]

As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that the Respondent has committed a violation. At a hearing on the merits, a panel has the benefit of a more fully developed record and the ability to make credibility determinations in evaluating whether a violation has been proved, considering the record as a whole and the applicable evidentiary burdens and standards.

In this case, the Complainants have submitted the Respondents' 2005 Annual Campaign Finance Report which lists the $100 donation to Eastside Neighborhood Services. The reported donation is sufficient evidence that reasonably tends to show the existence of a violation of the charitable contribution limit. Whether the Respondents simply made a reporting error and

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[4] The Administrative Law Judge considered the Complainants' written submission despite the fact that it was received after the 4:30 p.m. deadline on September 15, 2006.

[5] Minn. Stat. § 211B.34, subd. 2.

[6] 239 N.W.2d 892 (Minn. 1976); *see also* Black's Law Dictionary 1219 (7th ed. 1999) (defining "probable cause" as "[a] reasonable ground to suspect that a person has committed or is committing a crime.")

[7] *Id*., 239 N.W.2d at 902.

[8] *Id*. at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. *See, e.g.*, Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the test for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

[9] *State v. Florence*, 239 N.W.2d at 903.

mischaracterized the expenditure as they claim, is a factual determination that should be left to a panel of administrative law judges to decide. Likewise, if it was a mistake, a panel must determine whether the mistake negates the apparent violation, and if not, determine whether a sanction is appropriate. Accordingly, this matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges for an evidentiary hearing.[10]

The parties may, however, agree to forgo having an evidentiary hearing and allow the panel to decide the case based on the record created at the probable cause hearing and written submissions. To do so, each party must contact OAH Staff Attorney Mary Beth Gossman at 612-349-2539 by Monday, September 25, 2006, and indicate their willingness to forgo the evidentiary hearing. If not all parties agree to such a procedure, a notice of evidentiary hearing will be issued, assigning this matter to a panel of administrative law judges, and setting the date and time for the evidentiary hearing and the exchange of witness and exhibit lists.

S.M.M.

[10] The parties may agree to forgo having an evidentiary hearing and allow the panel to decide the case based on the record created at the probable cause hearing and written submissions. A notice of evidentiary hearing will be issued, after which either party can decide if they want an evidentiary hearing. If either party states a request for an evidentiary hearing, then one will be convened. In either case, the record made already will be incorporated into the evidentiary hearing record